

BILL ANALYSIS

S.B. 271
By: Uresti
Natural Resources
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Bexar Metropolitan Water District (District) was created by the 49th Legislature in 1945, to serve expected growth in Bexar County. From an initial account base of 4,765 primarily residential accounts, it has grown to more than 92,000 residential and commercial accounts today. Repeated and numerous customer complaints about inadequate service, unsafe water conditions, and excessive rates resulted in legislative intervention in 2007, with H.B. 1865, which created the Joint Committee on Oversight of Bexar Metropolitan Water District (committee) to monitor the operations, management, and governance of the district. The legislature also mandated operational and financial audits of the district by the state. The audits found a number of serious problems with the district, including financial improprieties, weak management, and a pattern of unethical conduct and unprofessional management practices by certain officials of the district. Attempts to put legislative remedies in place in 2009, were unsuccessful and oversight by the committee continued during the interim with findings that the district's board of directors is incapable of functioning as a policymaking body. The committee recommended that two bills be filed to address the district's situation. S.B. 271 would address board governance issues for the district. Elements of the bill include board member term limits, continued oversight by the committee, board candidate qualifications, political contribution limits, board training requirements, ethics provisions, and board member recall provisions.

S.B. 271 amends current law relating to the board of directors of the Bexar Metropolitan Water District.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends Sections 1 and 8, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, as follows:

Sec. 1. Deletes existing text providing for the Bexar Metropolitan Water District (district) to sometimes be called the "District" in this Act.

Sec. 8. (a) Provides that the seven, rather than five, members of the board of directors of the district (board) be elected to staggered two-year terms in an election held on the uniform election date in November. Provides that directors are elected from numbered single-member districts established by the board. Requires the board to revise each single-member district after each decennial census to reflect population changes and to conform with state law, the federal Voting Rights Act of 1965 (42 U.S.C. Section 1973 et seq.), and any applicable court order. Provides that at an election of directors, the candidate from each single-member district who receives the greatest number of votes is elected to represent that single-member district. Requires each director to hold office until his successor is elected or appointed and has qualified. Makes nonsubstantive changes.

Deletes existing text requiring that each board member be elected for a term of six (6) years each, provided that an election for two (2) directors for a term of six (6) years shall be held on the first Tuesday in April, 1954; the terms of three (3) members of the present board shall be, and are, hereby, extended to the first Tuesday in April, 1957; and the present directors shall determine such three (3) by lot. Deletes existing text providing that three (3) directors shall be elected on the first Tuesday in April, 1957, and two (2) directors and three (3) directors, alternately, shall be elected each three (3) years thereafter on the first Tuesday in April as the six-year terms expire. Deletes existing text providing that the two (2) or three (3) persons, respectively, receiving the greatest number of votes shall be declared elected.

(a-1) Provides that a person is not eligible to serve as a director for more than three terms or for more than a total of seven years of service.

(b) Requires such elections to be called, conducted, and canvassed in the manner provided by the Election Code, rather than in the manner provided by Chapter 25, General Laws of the Thirty-ninth Legislature, Regular Session, 1925, and any amendments thereto.

(c) Requires the board to fill all vacancies on the board by appointment and requires such appointees to hold office until a successor elected at the next scheduled election date has qualified, rather than to hold office for the unexpired term for which they were appointed.

(d) Provides that any four members of the board, rather than any three members, are a quorum for the adoption or passage of any resolution or order or the transaction of any business of the district. Makes nonsubstantive changes

(e) Requires a director to be a qualified voter of the single-member district from which the director is elected. Deletes existing text requiring directors succeeding the first board, whether now or hereafter elected, to be qualified resident electors of Bexar County, Texas, and owners of taxable property within the area comprising said district, and to organize in like manner.

(f) Prohibits a payment to a director for fees of office under Section 49.060 (Fees of Office; Reimbursement), Water Code, from being made for a meeting that occurs in a different fiscal year from the one in which the payment is made.

SECTION 2. Amends Section 33A, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, by amending Subsection (c) and adding Subsection (g), as follows:

(c) Provides that the oversight committee is comprised of seven, rather than five, members appointed as follows:

(1) two senators who represent senate districts that include territory within the Bexar Metropolitan Water District, appointed by the lieutenant governor, rather than the senator sponsor of this Act, or, in the event this senator cannot serve, a senator appointed by the lieutenant governor;

(2) two representatives who represent house districts that include territory within the Bexar Metropolitan Water District, appointed by the Speaker of the Texas House of Representatives, rather than author of this Act, or, in the event this representative cannot serve, a representative appointed by the Speaker of the Texas House of Representatives;

(3) one member with special expertise in the operation of public water utilities appointed by the governor;

(4) one member appointed by the governor to represent the public; and

(5) one member, rather than a member, of the Bexar County Commissioners Court who represents a precinct in which customers of the district reside.

(g) Requires the oversight committee, on or before December 31, 2012, to provide a report under Subsection (e) of this section (relating to a report concerning the district's ability to meet service and financial standards) to the legislature. Provides that the committee is abolished and this section expires January 1, 2013.

SECTION 3. Amends Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, by adding Sections 1A, 8A, 8B, 8C, 10A, and 10B, as follows:

Sec. 1A. Defines, in this Act, "board," "commission," "director," and "district."

Sec. 8A. (a) Requires a person, in order to be eligible to be a candidate for or to be elected or appointed as a director, to have:

(1) resided continuously in the single-member district that the person seeks to represent for 12 months immediately preceding the date of the regular filing deadline for the candidate's application for a place on the ballot;

(2) viewed the open government training video provided by the attorney general and provided to the board a signed affidavit stating that the candidate viewed the video;

(3) obtained 200 signatures from individuals living in the district; and

(4) paid a filing fee of \$250 or filed a petition in lieu of the filing fee that satisfies the requirements prescribed by Section 141.062 (Validity of Petition), Election Code.

(b) Defines, in this subsection, "political contribution" and "specific-purpose committee." Prohibits a director or a candidate for the office of director from knowingly accepting political contributions from a person that in the aggregate exceed \$500 in connection with each election in which the person is involved. Provides that, for purposes of this subsection, a contribution to a specific-purpose committee for the purpose of supporting a candidate for the office of director, opposing the candidate's opponent, or assisting the candidate as an officeholder is considered to be a contribution to the candidate.

Sec. 8B. (a) Prohibits a person who is elected or appointed to and qualifies for office as a Director on or after the effective date of this section from voting, deliberating, or being counted as a member in attendance at a meeting of the board until the person completes a training program on district management issues. Requires that the training program provide information to the person regarding:

(1) the enabling legislation that created the district;

(2) the operation of the district;

(3) the role and functions of the board;

(4) the rules of the board;

(5) the current budget for the board;

(6) the results of the most recent formal audit of the Board;

(7) the requirements of the:

(A) open meetings law, Chapter 551 (Open Meetings), Government Code;

(B) open records law, Chapter 552 (Public Information), Government Code; and

(C) administrative procedure law, Chapter 2001 (Administrative Procedure), Government Code;

(8) the requirements of the conflict of interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(b) Authorizes the Texas Commission on Environmental Quality (TCEQ) to create an advanced training program designed for a person who has previously completed a training program described by Subsection (a) of this section. Provides that if TCEQ creates an advanced training program under this subsection, a person who completes that advanced training program is considered to have met the person's obligation under Subsection (a) of this section.

(c) Requires each director who is elected or appointed on or after the effective date of this section to complete a training program described by Subsection (a) or (b) of this section at least once in each term the director serves.

(d) Requires the board to adopt rules regarding the completion of the training program described by Subsection (a) or (b) of this section by a person who is elected or appointed to and qualifies for office as a director before the effective date of this section. Requires a director described by this subsection who does not comply with board rules to be considered incompetent as to the performance of the duties of a director in any action to remove the director from office.

(e) Prohibits a director from:

(1) accepting or soliciting a gift, favor, or service, the value of which exceeds \$50 per gift, favor, or service, that:

(A) might reasonably influence the director in the discharge of an official duty; or

(B) the director knows or should know is being offered with the intent to influence the director's official conduct;

(2) accepting other employment or engaging in a business or professional activity that the director might reasonably expect would require or induce the director to disclose confidential information acquired by reason of the official position;

(3) accepting other employment or compensation that could reasonably be expected to impair the director's independence of judgment in the performance of the director's official duties;

(4) making personal investments that could reasonably be expected to create a substantial conflict between the director's private interest and the interest of the district;

(5) intentionally or knowingly soliciting, accepting, or agreeing to accept any benefit for having exercised the director's official powers or performed the director's official duties in favor of another; or

(6) having a personal interest in an agreement executed by the district.

(f) Requires a director, not later than April 30 each year, to file with the Bexar County clerk a verified financial statement complying with Sections 572.022 (Reporting Categories; Required Descriptions), 572.023 (Contents of Financial Statement in General), 572.024 (Information About Services for Lobbyists or Lobbyist Employers), and 572.0252 (Information About Referrals), Government Code. Requires the district to keep a copy of a financial statement filed under this section in the main office of the district.

Sec. 8C. (a) Authorizes a director to be recalled for:

(1) incompetency or official misconduct as described by Section 21.022 (Definitions), Local Government Code;

(2) conviction of a felony;

(3) incapacity;

(4) failure to file a financial statement as required by Section 8B(f) of this Act;

(5) failure to complete a training program described by Section 8B(a) or (b) of this Act; or

(6) failure to maintain residency in the district.

(b) Requires the board, if at least 10 percent of the registered voters in a single-member voting district of the district submit a petition to the board requesting the recall of the director who serves that single-member voting district, not later than the 10th day after the date the petition is submitted, to mail a written notice of the petition and the date of its submission to each registered voter in the single-member voting district.

(c) Requires the board, not later than the 30th day after the date a petition requesting the recall of a director is submitted, to order an election on the question of recalling the director.

(d) Authorizes a recall election under this section to be held on any uniform election date.

(e) Provides that if a majority of the voters of a single-member voting district, voting at an election held under this section, favor the recall of the director who serves that single-member voting district, the director is recalled and ceases to be a director.

Sec. 10A. Requires that all board reimbursements and expenditures be approved by the board in a regularly scheduled meeting.

Sec. 10B. Prohibits the board from selecting the same auditor to conduct an audit required by Section 49.191 (Duty to Audit), Water Code, for more than three consecutive annual audits.

SECTION 4. (a) Makes application of Section 8, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, as amended by this Act, prospective.

(b) Makes application of Section 8A, Chapter 306, Acts of the 49th Legislature, Regular Session, 1945, as added by this Act, prospective.

(c) Requires the district, for two of the numbered single-member district director's positions that expire in 2012, to call and hold an election on a uniform election date in 2012 to elect the directors for those positions for terms that expire on the uniform election date in November 2013. Requires the district, for the other two director's positions that expire in 2012, to call and hold an election on the same uniform election

date in that year to elect the directors for those positions for terms that expire on the uniform election date in November 2014. Requires the district to determine by lot which single-member districts shall elect directors to serve one-year terms and which shall elect directors to serve two-year terms.

SECTION 5. (a) Provides that the legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313 (Notice for Local and Special Laws), Government Code.

(b) Provides that the governor, one of the required recipients, has submitted the notice and Act to TCEQ.

(c) Provides that TCEQ has filed its recommendations relating to this Act with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d) Provides that all requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 6. Provides for the effective date of this Act.

EFFECTIVE DATE

Upon passage or September 1, 2011.